IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

GANESHA RAM VS STATE OF RAJ & OTHERS

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.550/2004

Under Section 18 of the Rajasthan High Court Ordinance, 1949 against the order passed by learned Single Judge in S.B. Civil Writ Petition No.3122/2004

Date of Judgment : 1st November, 2004.

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE N.K. JAIN

Mr. Hemant Choudhary for appellant.
Mr. D.R. Gurjar for respondents.

BY THE COURT : (PER HON'BLE N.K. JAIN, J.)

This special appeal is directed against the judgment of the learned Single Judge dated 28th July, 2004, whereby the writ petition filed by the appellant against the order of the Board of Revenue dated 24th December, 2003, has been dismissed in limine.

The petitioner-appellant filed a writ petition wherein it was averred that

non-petitioners No.6 and 7 filed an application before Sub-Divisional Officer, Nagaur, under Section 128 of the Rajasthan Land Revenue Act, 1956. The said application was allowed by S.D.O. by its order dated 22nd May, 1998. Being aggrieved with the said order, the petitioner-appellant preferred an appeal before the Revenue Appellate Authority who dismissed the same vide its order dated 14th March, 2000. The petitioner-appellant thereafter preferred a review petition before the same Court i.e. the Revenue Appellate Authority to review its order dated 14th March, 2000. The Revenue Appellate Authority vide its order dated 5th May, 2000 allowed the review application and modified the order dated 14th March, 2000 and directed the lower court to demarcate the land of the parties on the basis of the survey maps. Respondents No.6 and 7 thereafter filed a revision petition under Section 84 of the Rajasthan Land Revenue Act, 1956 before the Revenue Board against the order dated 5th May, 2000. The Revenue Board vide its judgment dated 24th December, 2003 allowed the revision petition filed by respondents No.6 and 7 and set aside the order dated 5th May, 2000 passed by the Revenue Appellate Authority. The said order of the Revenue Board was challenged by way of writ petition, was dismissed by the learned Single Judge.

Learned counsel for the appellant argued before us that the Revenue Board allowed the revision petition of respondents No.6 and 7 on the ground that the Revenue Appellate Authority exceeded its jurisdiction in deciding the review petition. He further submitted that the order of the Revenue Board shows that the

Revenue Appellate Authority has decided the review petition assuming that the Revenue Appellate Authority had no powers to review its own order.

Learned counsel for the respondents has supported the judgment of the learned Single Judge as well as of the Revenue Board.

We have perused the judgment dated 24th December, 2003 passed by the Revenue Board.

Section 86 of the Rajasthan Land Revenue Act, 1956 reads as under :

> **"86. Review by the Board and other Courts**- (1) The Board of its own motion, or on application of a party to a suit or other proceeding may review and may rescind, alter or confirm any order made by itself or by any of its members.
>
> (2) Every other revenue court, or officer may either on its or his own motion, or on application of any party interested, review any order passed by itself or himself or by any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit:
>
> Provided that -
>
> (i) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;
>
> (ii) no order from which an appeal has been made or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;
>
> (iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within ninety days from the passing of the order.

> (3) An application for review under this section shall lie on any of the grounds mentioned in rule 1 of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908) and the provisions of the said order shall, subject to the provisions contained in sub-section (1) or sub-section (2), be applicable."

A bare perusal of Section 86 of the Act shows that under sub-section (1) of Section 86 the power of review has been given to the Board and under sub-section (2) of Section 86 every other revenue court or officer has been given powers of review any order passed by itself or himself or by any of its or his predecessors in office.

The Revenue Board was, therefore, not right in observing that the Revenue Appellate Authority has no jurisdiction to entertain the review application. So far as scope of review powers are concerned, the same are limited as mentioned under Section 86 of the Act. The Board has neither analysed the facts nor the relevant point of law. The reasons given by the Revenue Appellate Authority in its judgment dated 5th May, 2000, allowing the review petition have not been considered and no reasons have been assigned by the Revenue Board as to why those reasons were not correct so as to interfere in the review petition by the Revenue Appellate Authority. The Revenue Board has also not assigned any reason as to whether it was a fit case for interference in revision petition before the Revenue Board or not. Therefore, in view of above, we are of opinion that

the judgment of the Revenue Board dated 24th December, 2003 is liable to be set aside.

Consequently, we allow this special appeal and set aside the judgment of the learned Single Judge dated 28th July, 2004 as well as order dated 24th December, 2003 passed by the Revenue Board and remand the matter to the Revenue Board, Ajmer to decide the revision petition filed by respondents No.6 and 7 keeping in view the observations made by us in this order and in accordance with provisions of law. Cost made easy.

(N.K. JAIN),J **(N.N.MATHUR),J.**

Vijayant